

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3275 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

VINODCHANDRA NATWARLAL SHAH

Versus

STATE OF GUJARAT

Appearance:

MR NAVIN PAHWA FOR M/S THAKKAR ASSOC. for the Petitioner.
MR HL JANI, AGP, for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 05/08/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 11-4-98 passed by the District Magistrate, Vadodara, under Section 3 (2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the said Act"), recording a finding that with a view to preventing him from acting in any manner prejudicial to the maintenance

of supplies of commodities essential to the community it is necessary to detain him, has filed this petition under Article 226 of the Constitution of India challenging the legality and validity of the order of detention.

Since this petition is required to be allowed on the first contention advanced by Mr. Pahwa learned Advocate for the petitioner that there was delay in forwarding the representation by the District Magistrate, Vadodara, it is not necessary for me to refer to and deal with the other contentions raised and to renarrate the allegations made in the grounds of detention.

It is the grievance of the petitioner that since the petitioner had made a representation dated 16-4-1998 addressed to the detaining authority by registered post A/D, making a request to revoke the order of detention on the grounds stated therein and even if the detaining authority had received the representation on 17-4-98, no decision was taken immediately and, therefore, the continued detention of the detenu is vitiated.

Mr.P.B.Shah, Under Secretary to the Government of Gujarat, Food, Civil Supplies and Consumer Affairs Department, Sachivalaya, Gandhinagar, has filed affidavit in reply. In paragraph 4 of the affidavit, it has been pointed out that the representation dated 16-4-98 made by Ashish V.Shah the son of the detenu addressed to the District Magistrate, Vadodara was sent to the District Magistrate vide their letter dated 24-4-98 and it was received by the Special Branch of Food, Civil Supplies and Consumer Affairs Department on 24-4-98 at 22.35 hours at the residence of Section Officer. It is further stated that as 25-4-98 and 26-4-98 were Government holidays, the said representation was given to the Branch by the Section Officer on 27-4-98. The file of the said representation was put up by the Special Branch on 27-4-98 which was cleared by the Section Officer, Under Secretary and Deputy Secretary on the same day and was placed before the Principal Secretary, Civil Supplies on 27-4-98. It is stated that as the Principal Secretary was on leave, the said file was sent to the Hon'ble Minister, Civil Supplies on 29-4-98 as 28-4-98 was a Government holiday. The file of the said representation was cleared by the Hon'ble Minister, Civil Supplies on 30-4-98. The file was received back by the Special Branch of Food, Civil Supplies and Consumer Affairs Department on 30-4-98 and the decision was communicated to the detenu vide Government letter dated 30-4-98. Reading the averments made in the said affidavit, it is clear that even though the District Magistrate, Vadodara

received the representation dated 16-4-98 on 17-4-98, he had not forwarded the same to the State Government till 24-4-98 meaning thereby the representation remained with him for six days. The District Magistrate has not filed any affidavit explaining the said delay. Mr. Jani, learned Assistant Government Pleader has stated after perusing the file that the District Magistrate in fact rejected the representation on 24-4-98. If that is so, the representation was rejected by him on 24-4-98 and no reasonable explanation is forth coming. Thus, the petition is required to be allowed on the ground that there was delay in forwarding the representation and there was also delay in considering the representation by the District Magistrate. In view of this position, the respondents have infringed the right guaranteed to the detenu under Article 22(5) of the Constitution of India and, therefore, the continued detention of the detenu is vitiated.

In the result, this petition is allowed. The order of detention dated 11-4-98 is quashed and set aside. The detenu Vinodchandra Natwarlal Shah is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs.

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